

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

v.

DAVID E. GORSKI

No. 1:12-CR-10338-FDS

MOTION OF PROPOSED INTERVENOR LEGION CONSTRUCTION, INC. FOR DE NOVO HEARING ON CRIME-FRAUD ISSUE

Now comes proposed intervenor Legion Construction, Inc. and respectfully moves that this Honorable Court order a *de novo* hearing regarding the applicability of the crime-fraud exception to the privileged documents which Legion and its former counsel Mintz Levin have produced pursuant to Rule 17(c) subpoenas and which this Court has reviewed *in camera*.

As reason therefor, Legion states that its prior counsel had no notice of the September 4, 2010, status conference and, particularly, no notice that the Court would consider the applicability of the crime-fraud exception to the privileged documents produced by it and Mintz Levin at the September 4, 2014, status conference, and it therefore had no opportunity to be heard on this matter vital to its interests in the preservation of its attorney-client privilege. [I]t is well-settled that the essential requirements of procedural due process include adequate notice and an opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Aponte-Rosario v. Acevedo-Vila*, 617 F.3d 1, 9 (1st Cir. 2010), quoting *Amsden v. Moran*, 904 F.2d 748, 753 (1st Cir.1990). See, e.g., *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985); *Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306, 313 (1975); *Goss v. Lopez*, 419 U.S. 565, 581 (1975). This fundamental due

process requirement can be satisfied in this case only by affording Legion a *de novo* hearing on the matter after allowing a reasonable time for the undersigned new counsel for Legion to prepare its opposition to the government's arguments and to present Legion's defenses to the abrogation of its privileges through application of the crime-fraud exception.

Respectfully submitted,
Legion Construction, Inc.,
By Its Attorney,

/s/ Martin G. Weinberg

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served by ECF on all counsel of record in this matter on September 8, 2014.

/s/ Martin G. Weinberg

Martin G. Weinberg